TESTIMONY OF

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ON BEHALF

THE AMERICAN CIVIL LIBERTIES UNION

BEFORE THE

HOUSE POST OFFICE AND CIVIL SERVICE COMMITTEE

SUBCOMMITTEE ON HUMAN RESOURCES

JUNE 13, 1989

Mr. Chairman:

On behalf of the American Civil Liberties Union, I appreciate the opportunity to testify on the issue of ethics laws and the impact of such laws on the recruitment and retention of government employees. The American Civil Liberties Union is a nonpartisan organization of over 275,000 members dedicated to the defense and enhancement of civil liberties. The ACLU has a longstanding commitment to the defense of both the First Amendment and the rights of government employees. For that reason we have a particular interest in assuring that any new ethics restrictions are carefully drawn to avoid infringing on the First Amendment rights of former government employees.

There is no doubt that government employment today brings with it a significant -- and we believe unwarranted -- risk for individual rights. Ever since the Hatch Act stripped federal employees of their right to fully participate in the political process, government workers have been viewed as somehow entitled to less than a full measure of rights. Although the view that a government job is a privilege which the government can bestow on its own terms has been largely discredited by the courts, government workers continue to be subjected to sweeping restrictions on their fundamental freedoms. No one who has witnessed the widespread initiation of intrusive drug testing and polygraph programs or followed recent efforts to strip the

security clearance system of procedural due process can reach a different conclusion.

I cannot tell you whether this assault on rights affects the government's ability to recruit and retain qualified employees. It is well outside the expertise of the ACLU to do so. But I can tell you -- from the ACLU's extensive experience defending the rights of government employees -- that federal workers deeply resent the erosion of their rights particularly when restrictions appear to be overbroad, or as is more often the case, unsupported by any record of abuse or misconduct. I do not know whether that dissatisfaction plays a significant part in career decisionmaking, or whether the perception that government employment brings with it a loss of fundamental freedoms has a chilling effect on recruitment. I can only suggest that it is a concern that this subcommittee should keep in mind when it is examining proposed ethics provisions.

There is no doubt that ethics laws, particularly those provisions aimed at post-employment lobbying and other representational activities of former government officials, have a substantial impact on First Amendment rights. The right to lobby, whether to express one's own views on public matters or to represent the views of another, stands at the heart of the First Amendment and its guarantees of free speech, association and petition. See, Buckley v Valeo, 424 U.S. 1, 45(1976); Roth v United States, 354

U.S. 476 (1957). The protected nature of that activity is not diminished by the fact that the "petitioner" may be a former government employee or that he or she may be representing the views of others or for a fee.

Former government employees do not lose their rights to free speech as a result of government employment. The Supreme Court has stated that "[f]or at least 15 years, it has been settled that a state cannot condition public employment on a basis that infringes upon the employee's constitutionally protected interest in freedom of expression." Connick v. Myers, 461 U.S. 138 at 142 (1981). Limits on speech during public employment must represent a balancing of the interests of the employee, as a citizen, in commenting on matters of public concern and the interests of the state, as an employer, in promoting the efficiency of the public services it performs through its employees. Pickering v. Board of Education, 391 U.S. 563 (1968). The limits on speech following employment must meet the more stringent First Amendment standards traditionally applied by the Court: (1) A compelling state interest must be at stake; (2) there must be a demonstrated need for the regulation; and (3) the restriction must be narrowly drawn so as not to impose limitations on rights greater than those necessary to protect the interest at stake. See Widmar v. Vincent, 454 U.S. 263 (1983). That is so even when the speech is for a fee. The Court has "never suggested that the dependence of a communication on the expenditure of money operates itself to

introduce a nonspeech element or to reduce the exacting scrutiny required by the First Amendment." Buckley, supra at 16. As the Court recently stated, "[i]t is well settled that a speaker's rights are not lost merely because he or she is paid to speak." Riley v. National Federation of the Blind of North Carolina, 56 L.W. 4869, 4875 (June 29, 1988) (Emphasis added.); Meyer v. Grant, 56 L.W. 4516 (June 6, 1988).

We do not doubt that the government has a compelling interest in guarding the integrity of public service. Nor do we disagree that properly drawn ethics laws are an appropriate means to that end. Current statutory limits on post-employment political activity are, in our view, within the limits sanctioned by the Supreme Court. But further expansion of the statute brings with it further limitations on First Amendment rights. For that reason, new restrictions must be based on a demonstrable record of actual misconduct, and a showing that the current law (18 USC §207) is inadequate to reach the harm. Once that threshold showing is made, the restriction must then be narrowly tailored to avoid broadly impinging on rights and should apply only to those in the federal workforce at greatest risk of misconduct. Restrictions that are based on nothing more than speculation, suspicion, a concern for the appearance of impropriety, or indeed public distrust of the federal government, fall far short of constitutional requirements.

I am not suggesting that Congress must abandon its efforts to reform the post-employment ethics laws. Rather, I am simply urging that Congress measure each of the pending provisions against the exacting scrutiny of the First Amendment. That means that Congress must ask itself in each instance:

1) What is the evil that is being addressed here?
2) Does it rise to the level of a compelling state interest?
3) Is the problem one of public perception or is there a demonstrable record of abuse?
4) If there is a record of abuse, can it be traced to an inadequacy in the existing law or a lack of vigorous enforcement?
5) If new restrictions are warranted, what rights may be placed at risk or chilled if the provision is enacted?
6) How broad does the restriction really need to be; should it sweep across the federal workforce or is there a particular group of employees who are at greatest risk for misconduct?
7) How can this provision be narrowly drawn to assure that legitimate First Amendment conduct is not unduly burdened?

The Post Office and Civil Service Committee and this subcommittee in particular have a demonstrated expertise in federal personnel matters and a longstanding commitment to the preservation of the rights of government employees. The ACLU believes that perspective is critical to the formulation of rational and fair ethics laws. For that reason, I urge that this subcommittee test the pending ethics proposals against the questions that I have outlined, and if any provision is found wanting, that you insist that it be modified to meet First Amendment concerns. In particular, I urge that you carefully scrutinize new provisions that extend the post-employment lobby restrictions to Congress, criminalize disclosure of government information or impose special restrictions on the employment of former government workers by foreign entities. Had such a cautious approach been undertaken when Congress enacted the Hatch Act fifty years ago, the most draconian parts of that law surely would not have been enacted, and federal workers would not have been "relegate[d] ... to the role of mere spectators ..." in the political process. United Public Workers v Mitchell, 330 U.S. 790 (1947)(Black, J. dissenting) We need not repeat that unhappy chapter here. We are confident that an ethical government need not be inconsistent with the values of the First Amendment and the rights of government workers.

STATEMENT OF

LELAND F. PAGE

BEFORE THE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

SUBCOMMITTEE ON HUMAN RESOURCES

JUNE 13, 1989

Declassified and Approved For Release 2014/04/25 : CIA-RDP92M00732R000700070037-4

I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THIS SUBCOMMITEE TO GIVE MY COMMENTS ON THE "THE EFFECTS OF FEDERAL ETHICS RESTRICTIONS ON THE RECRUITMENT AND RETENTION OF FEDERAL EMPLOYEES".

UNTIL MAY 15, 1989, I WAS EMPLOYED BY THE FEDERAL AVIATION ADMINISTRATION (FAA) AS DIRECTOR OF THE AUTOMATION SERVICE. I WAS RESPONSIBLE FOR CONTRACTS TOTALLING NEARLY $4 BILLION TO REPLACE AND UPGRADE THE COMPUTERS AND SOFTWARE SYSTEMS THAT FORM THE HEART OF THE NATION'S AIR TRAFFIC CONTROL (ATC) SYSTEM. THE ADVANCED AUTOMATION SYSTEM CONTRACT WAS THE LARGEST OF MY PROJECTS AND ITS SUCCESS IS CRITICAL IF THE ATC SYSTEM IS TO KEEP PACE WITH THE GROWTH IN AVIATION.

I RETIRED FROM THE FAA ON MAY 15, 1989, BECAUSE OF THE PROCUREMENT INTEGRITY AMENDMENT TO THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT. THE AMENDMENT WOULD HAVE PROHIBITED MY BEING EMPLOYED FOR TWO YEARS AFTER LEAVING GOVERNMENT SERVICE BY ALL OF THE COMPANIES WHO ARE ACTIVELY INVOLVED IN THE DEVELOPMENT OF ATC AUTOMATION SYSTEMS. SINCE THIS IS MY FIELD OF EXPERTISE, THE AMENDMENT WOULD FORECLOSE ALL REASONABLE EMPLOYMENT OPTIONS IN WHICH I AM INTERESTED. I HAD BEEN ELIGIBLE TO RETIRE A YEAR EARLIER BUT, DESPITE THE CONGRESSIONAL FAILURE TO APPROVE THE PAY RAISE EARLIER THIS YEAR, I HAD STUCK WITH THE JOB BECAUSE OF THE IMPORTANCE OF THE THE ADVANCED AUTOMATION PROGRAM. HOWEVER, WHEN I LEARNED ABOUT THE EMPLOYMENT PROHIBITIONS IN THE PROCUREMENT INTEGRITY AMENDMENT, IT WAS THE LAST STRAW. I LEFT GOVERNMENT SERVICE THE DAY BEFORE IT WAS DUE TO GO INTO EFFECT.

I WOULD LIKE TO REVIEW BRIEFLY MY BACKGROUND TO ILLUSTRATE HOW COUNTERPRODUCTIVE THIS AMENDMENT WILL BE. I BEGAN MY CAREER IN COMPUTER SYSTEMS ENGINEERING IN THE AEROSPACE INDUSTRY AND WORKED IN THAT FIELD FOR 17 YEARS. ONE OF THE CONTRACTS ON WHICH I WORKED IN 1960 WAS FOR THE FAA. IT WAS THE FIRST SIGNIFICANT PROGRAM TO PROVE THE TECHNICAL FEASIBILITY AND BENEFITS OF USING LARGE SCALE COMPUTERS TO SUPPORT THE REAL TIME OPERATIONS OF AIR TRAFFIC CONTROL. THIS PROJECT WAS CALLED SATIN, WHICH STANDS FOR SAGE AIR TRAFFIC INTEGRATION, AND IT LED DIRECTLY TO THE FAA PROGRAM TO PROCURE AND IMPLEMENT DURING THE 1970s THE NAS STAGE A AUTOMATION SYSTEM IN THE 20 AIR ROUTE TRAFFIC CONTROL CENTERS IN THE U. S.

IN 1971, THE SAME PERSON WHO HAD MANAGED THE SATIN PROJECT

INVITED ME TO JOIN THE FAA TO WORK ON UPGRADING THE ATC SYSTEM. I ACCEPTED FOR THE FOLLOWING TWO REASONS:

(1) THE WORK WAS TREMENDOUSLY CHALLENGING, AND

(2) THE PAY AT THAT TIME WAS COMPETITIVE WITH INDUSTRY.

I CAN HONESTLY SAY THAT I WOULD NOT HAVE ACCEPTED THAT OFFER TO JOIN FAA AT THAT TIME IF THE PROCUREMENT INTEGRITY AMENDMENT HAD BEEN IN EFFECT. ITS PROHIBITIONS AGAINST POST GOVERNMENT EMPLOYMENT WOULD NOT HAVE BEEN ACCEPTABLE. SIMILARLY, I WOULD NOT HAVE JOINED THE FAA IF THE GOVERNMENT PAY SCALE HAD BEEN AS LOW AS IT HAS BECOME IN THE LAST 10 YEARS.

THIS LEADS TO THE FIRST MAJOR POINT I WOULD LIKE TO MAKE TO THIS SUBCOMMITTEE. THE GOVERNMENT IS NO LONGER ABLE TO RECRUIT TOP TALENT IN THE SCIENCE AND ENGINEERING FIELDS BECAUSE IT DOES NOT PROVIDE COMPETITIVE SALARIES AND BECAUSE OF THE SUCCESSION OF ONEROUS CHANGES SUCH AS THE PROCUREMENT INTEGRITY AMENDMENT. GOVERNMENT SERVICE IS SIMPLY AN UNACCEPTABLE CAREER FOR TALENTED, AMBITIOUS PEOPLE. IF THE TREND OF THE LAST 10 YEARS CONTINUES, IT IS EASY TO PREDICT THAT THE GOVERNMENT WORK FORCE IS DESTINED FOR MEDIOCRITY, AND IN THE RELATIVELY NEAR FUTURE, SYSTEMS SUCH AS THE AIR TRAFFIC CONTROL SYSTEM WILL BE IMPACTED RATHER NEGATIVELY.

THE SECOND MAJOR POINT I WANT TO MAKE IS THAT THE STATEMENTS THAT THE PROCUREMENT INTEGRITY AMENDMENT IS NEEDED TO "RESTORE CONFIDENCE IN GOVERNMENT" IS UTTER NONSENSE. I DO NOT BELIEVE THE PUBLIC HAS LOST CONFIDENCE IN THE GOVERNMENT WORK FORCE BECAUSE OF THE ETHICAL TRANSGRESSIONS OF A FEW ISOLATED INDIVIDUALS. THE NUMBER OF PEOPLE IN GOVERNMENT WHO HAVE VIOLATED THE ETHICS LAWS IS SO SMALL AS TO BE STATISTICALLY INSIGNIFICANT, AND THEY ARE BEING PROSECUTED APPROPRIATELY. IN MY OPINION, THE PUBLIC WILL MAINTAIN ITS CONFIDENCE IN GOVERNMENT ONLY IF THE GOVERNMENT WORK FORCE IS COMPETENT AND PERFORMS ITS FUNCTIONS CREDIBLY. THE MOST SERIOUS THREAT TO PUBLIC CONFIDENCE IS NOT THE ETHICS VIOLATORS BUT IT IS THE PREDICTABLE EROSION IN COMPETENCE THAT WILL BE THE INEVITABLE CONSEQUENCE OF CONTINUED LOW PAY AND RESTRICTIVE LEGISLATION.

THE LAST MAJOR POINT IS THAT THE ETHICS IN GOVERNMENT ACT OF 1978 IS QUITE SUFFICIENT. THE COMBINATION OF THE ANNUAL DISCLOSURE STATEMENT; ANNUAL REVIEWS OF CONTROLS FOR WASTE, FRAUD AND ABUSE; PERSONAL VIGILANCE; AND INSPECTOR GENERAL REVIEWS IN SELECTED AREAS ARE QUITE ENOUGH TO IDENTIFY AND PROSECUTE ETHICS VIOLATORS. ADDITIONAL RESTRICTIVE LEGISLATION SUCH AS THE PROCUREMENT INTEGRITY AMENDMENT ADDS COMPLEXITY AND CONFUSION, AND IT HAS ALREADY BEEN SHOWN TO BE COUNTER-PRODUCTIVE. IT EFFECTIVELY DENIES THE GOVERNMENT THE CAPABILITY TO RETAIN ITS CURRENT EXECUTIVES AND IT WILL BE UNABLE TO TAP THE EXPERIENCED LABOR POOL IN INDUSTRY AS A SOURCE FOR RECRUITING BADLY NEEDED TALENT. THE PROCUREMENT INTEGRITY AMENDMENT IS ROUGHLY COMPARABLE TO A COMPANY THAT REQUIRES ITS NEW EMPLOYEES TO SIGN

AN AGREEMENT NOT TO GO TO WORK FOR A COMPETITOR FOR 2 YEARS, IF THEY EVER DECIDE TO LEAVE. THAT COMPANY WOULD HAVE AS MUCH TROUBLE AS THE GOVERNMENT IN HIRING COMPETENT, EXPERIENCED ENGINEERING AND COMPUTER SPECIALISTS.

I WOULD LIKE TO CONCLUDE MY STATEMENT WITH THREE RECOMMENDATIONS THAT WOULD DO MUCH TO IMPROVE THE CAPABILITY OF GOVERNMENT TO RECRUIT AND RETAIN NEEDED TALENT. THE RECOMMENDATIONS ARE DECEPTIVELY SIMPLE:

(1) REPEAL THE PROCUREMENT INTEGRITY AMENDMENT. THE CURRENT ETHICS LAW IS QUITE SUFFICIENT, AND "IF IT ISN'T BROKE, DON'T FIX IT".

(2) DECOUPLE THE SALARIES OF THE CAREER SENIOR EXECUTIVE SERVICE FROM CONGRESSIONAL SALARIES. THE CURRENT LINKAGE HAS FOR YEARS IMPACTED NEGATIVELY ON BOTH THE IMAGE AND REALITY OF THE SENIOR EXECUTIVE SERVICE BECAUSE OF THE ADVERSE POLITICAL PUBLICITY THAT OCCURS WHENEVER CONGRESS TRYS TO RAISE ITS OWN SALARY.

(3) INCREASE THE SALARY OF THE SENIOR EXECUTIVE SERVICE TO LEVELS THAT ARE COMPETITIVE WITH INDUSTRY EXECUTIVES WITH SIMILAR EXPERIENCE AND RESPONSIBILITIES. IN THE CASE OF ENGINEERS AND COMPUTER SPECIALISTS, THIS WOULD BE 30 TO 50 PERCENT. NOT ONLY IS THIS NEEDED TO MATCH SALARY TO RESPONSIBILITY, BUT IT WOULD ALSO ELIMINATE THE VERY UNFAIR PAY SCALE COMPRESSION AT THE TOP OF THE GS GRADES AND THE SENIOR EXECUTIVES.

MR. CHAIRMAN, I HOPE YOUR SUBCOMMITTEE WILL TAKE AGGRESSIVE ACTION TO RESTORE PRIDE AND PAY COMPARABILITY TO THE CAREER EXECUTIVES ON WHOM WE ALL DEPEND FOR COMPETENT EXECUTION OF GOVERNMENT PROGRAMS.

THIS CONCLUDES MY STATEMENT.

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TESTIMONY OF THE
SENIOR EXECUTIVE ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON HUMAN RESOURCES

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

ON

THE EFFECTS OF THE FEDERAL ETHICS RESTRICTIONS
ON THE RECRUITMENT AND RETENTION OF FEDERAL EMPLOYEES

PRESENTED BY
G. JERRY SHAW
GENERAL COUNSEL

JUNE 13, 1989

Mr. Chairman, we thank you for the opportunity to present the views of the Senior Executives Association on the Administration's proposed Government-Wide Ethics Act of 1989. The SEA represents the interests of the over 6,000 career members of the Senior Executive Service. SES members daily provide the leadership and continuity that keeps our government agencies operating efficiently and effectively. They provide policy advice and guidance to political executives and ensure that the Administration's and Congress' directives are implemented and carried out in their respective agencies.

THE FRUSTRATION FACTOR

I wish I were articulate enough, Mr. Chairman, to adequately express the impatience, concern and sometimes anger of career executives today. As their representatives, we have examined the statistics and background which would support the imposition of additional ethical restrictions on them. We have looked at the GAO reports that document the criminal referrals concerning career executives over the last years, and we have examined what background material we can find for some of the provisions of the proposed Government-Wide Ethics Act. We have been able to find no support, no support, for additional ethics law restrictions on career executives. GAO reported in 1988 that there had been 124 referrals by various agencies of career employees to the Department of Justice. Of those, two of them resulted in actual criminal prosecutions, with one conviction. This is the justification for additional restrictions?

At the Department of Defense where the procurement scandal is being investigated, those miscreants who were involved in accepting bribes or entering into conspiracies are in fact being caught and prosecuted under current laws. There has been no showing that the current law is not sufficient to protect the interests of the government and the american people. Current law has effectively covered the crimes and resulted in prosecutios and guilty pleas of government contractors and some few government employees. On June 8, 1989, the Washington Post reported the convictions of two executives of Teledyne Electronics, a government contractor. Federal Judge Richard Williams of Alexandria expressed his "outrage" about the terrible events involved in the bribery and conspiracy to bribe our government employees. He went on to sentence two executives of Teledyne to short terms of confinement at a half-way house for their roles. One received six months in a half-way house near his home in California, the other received three months in a half-way house so he could continue to work at Teledyne Electronics and support his family. The Judge's outrage was evidently aimed at the government, not the government contractor. Why is it that the American people accept sentences of six months and three months in half-way houses for convicted private sector officials and then seek to impose years of post-employment restrictions on government executives who had not only not been convicted of anything, but were the ones who upheld the law and reported the

violations? It does not make sense to us, and we cannot believe it makes sense to Congress.

SERVICE ON BOARDS OF DIRECTORS

Some of the proposals in the Government-Wide Ethics Act of 1989 are particularly puzzling. They would restrict all government executives from membership on a Board of Directors of a for-profit corporation. The question is why. We have asked everyone that we can think of that question and received no answers other than "it looks good." Congress has refused to grant pay increases to government executives over the years, because Congress has refused to grant pay increases to themselves. Anyone with a grain of common sense should realize that the result is going to be a need by government executives to subsidize their income, either through outside jobs or service on their own time on boards of ocmpanies where there is no conflict with their present position. Current rules require that, prior to serving in any capacity in a profit-making corporation, a government employee receive approval for outside employment. They must identify the company, the position they would hold, what the corporation does, what they would be doing on behalf of the corporation etc., to assure that there is no conflict before they can enter into service on the board, or in any other capacity with the corporation. In most instances, the corporations are small family businesses started by the government executive, executive's family or acquaintances. Our very informal, preliminary and

anecdotal survey indicates that there are a substantial number of career executives that serve on such boards. Every one of them had to receive clearance by their agencies prior to undertaking such activities. And they must disclose all earnings on their financial disclosure statements. There is no reason why this should not continue.

In many instances such a job is the difference between a government executive being able to help his or her children through college and not being able to do so. In other instances, it is the difference between the government executive being able to remain in government service and having to leave in order to supplement their income because of the pay restrictions that have been imposed. What sense does it make to impose a flat rule prohibiting service on for-profit boards when there has been no showing that a problem exists, where current restrictions require full disclosure, and no justification is given for the restrictions? Does someone just sit around and dream these things up? If they do, why don't they propose that government executives not be allowed to have marital relationships, since they might talk in their sleep and reveal something they should not? We are approaching the ridiculous in the attempt to "appear" to have achieved perfection in rules. The proposal should be rejected.

A second restriction would require that government executives have permission to serve uncompensated on not-for-profit boards. Current rules require that, if the executive

serves on a non-profit board and receives such compensation for such service, it would have to be revealed on his or her financial disclosure statements, and the service would become public. The new proposal would require that they receive prior approval to serve on church boards, boards of charities, and, coincidentally, the board of the Senior Executive Association. It is an unfair burden to require one to secure such permission. To do so could be used to unfairly limit a career executive's activities on his or her own time. A superior could rationalize limiting even pro-bono service on boards of organizations with which the superior did not personally agree. Ones which come immediately to mind might be the NAACP, or the National Right to Work Committee. These two opposing extremes might generate refusal by the superior because of their personal views.

The right of Freedom of Association is a cherished First Amendment constitutional right of all citizens of our country. The government should not intrude on this freedom unless absolutely necessary. Making it necessary to obtain permission to serve on not-for-profit boards will dampen the enthusiasm among senior executives to serve on such boards and to disclose such service. The proposal, in our view, is a dangerous intrusion on the constitutional rights of federal executives and could only be justified upon an extraordinary showing of necessity. No such no showing has been made. We again urge its rejection.

EXPANDED DISCLOSURE

While we do not believe additional financial disclosure is necessary, we do not object to such disclosure if the provision of additional disclosure results in the elimination of more onerous requirements. If one cannot serve on boards of for-profit corporation or without permission on the boards of not-for-profit corporations, why the necessity for financial disclosure, since the executives activities would be limited to those of their job in the government? About the only thing I can imagine you would have left to disclose is outside employment at a hamburger joint on the night shift. The necessity for both additional disclosure and additional restrictions has not been made. On balance, we would rather live with additional disclosure rather than additional restrictions.

OTHER PROPOSALS

Section 105 clarifies the rules on prohibiting gifts to supervisors, and we recognize the benefit of such clarification and have no objection to it. Section 106 would make uniform the rules on gifts to federal employees and is intended to establish a government-wide prohibition on acceptance of gifts where a conflict of interest or the appearance of a conflict of interest can be inferred. We have no objection to it, and welcome the institution of a government-wide prohibition which would be understood and applied uniformly in government agencies. We agree with the proposal to make travel acceptance authority

uniform in Section 107 and to deferral of tax liabilities to persons required to divest assets in order to avoid conflicts in Section 108.

Proposals to amend 18 U.S.C. §204, §205, and the remaining conflict section add civil and misdemeanor criminal penalties to many of the items listed. We understand the intent is so that successful prosecutions could be made for less serious crimes, or minor violations dealt with through the civil process rather than criminal. We think this goal is laudable, but recommend that careful consideration be given to limiting the government in the manner in which it proceeds. The government should be required before pursuing civil, misdemeanor/criminal or felony/criminal violations to determine which they are going to pursue. We do not believe that they should pursue civil actions against an individual and subsequently pursue criminal action, primarily because the individual might be placed in a situation of being unable to defend himself against the civil action when a potential criminal action could be subsequently brought. We recognize this parsing may be difficult to fashion, but do not think the government should "pile on" in a multiplicity of forums against an individual who, as a citizen, is presumed innocent until proven guilty.

MORE POST EMPLOYMENT RESTRICTIONS - THE PRICE

As far as the broadening of post employment restrictions for career executives, we vehemently oppose any expansion of those proscriptions. Current career executives are sufficiently restricted in their post-employment activities. No showing has been made that additional restrictions are needed. If the Administration wishes to expand post-employment restrictions for political executives, we would not object. A political executive can look at the post-employment prescriptions and the amount of salary when asked to serve in government, and determine whether he wishes to do that service. Career executives who have dedicated their professional lives to service of the public, and who, in most instances, have twenty or more years of government service, are in a poor position to exercise their right to resign when their entire economic future is tied up in the civil service retirement system which they cannot recoup if they leave. This is especially true when the executive's professional image with the public sector is not good due to the years of bureaucrat bashing perpetrated upon them by political aspirants. Additional restrictions could take away any option to resign by making them unemployable at their profession. The Procurement Integrity Act raises the possible penalties so high for a government contractor who hires the wrong former government employee, that many have decided to no longer do so, thus, eliminating their risk.

The spate of recent resignations at NASA, IRS, Department of Energy, DOD, DOT, GSA and other agencies are sufficient to prove that there is a limit of tolerance even for those who have dedicated their professional lives to government. The executives who left included the top Automation Manager for Air Traffic Safety at FAA - and his Deputy; a top Army computerization expert at Fort Belvoir; an Assistant Commissioner of the Internal Revenue Service; top officials of the General Services Administration - a substantial, and unnecessary loss of talent. In the June 1989 issue of Government Executive Magazine, the Secretary of Energy, Admiral James Watkins, (interviewed by Government Executive editor Timothy B. Clark) stated:

Question: "Does the Department face a brain drain or difficulty in recruiting?"

Answer: Yes. Are there enough top-notch civil servants? No. Can I recruit them into the high-skill areas? No. Did the lack of a pay raise hurt us? Absolutely. I've tried to get five assistant secretaries for defense programs- my number one assistant secretary - and I can't get them. They can't afford it. They want to work for the government, but they don't have the dough.

Question: Are you losing career people?

Answer: Sure. We can't beat them over the head all their lives and then expect them to be motivated. I am going to try to get 20 or 30 people at Savannah River to be DoE technical oversight people, to see that the Westinghouse contractor carries out his contract. Where do I get them? I don't know.

Question: That pushes you back to relying on outside contractors.

Answer: Right. And then who is the oversight for the contractors? How do I know that they are preforming well?..."

As that exchange indicates, this nation is paying a price for its failure to pay adequate salaries and its insistence on more and tighter ethics restrictions which have little or no justification. We all have heard that the Department of Energy has a huge problem with the alleged dumping of toxic waste, and that the FBI has begun a massive investigation of contractors operating DoE plants. Do we keep on driving out the people who can ensure that the contractors are performing, or do we begin to recognize that the nation needs them, in many instances, much more than those people need a job with our government.

ONE YEAR NO-CONTACT EXPANSION

The Administration's bill can be read to extend an agency or department-wide one-year no-contact ban to appointees or career employees as low as, for example, a U.S. Attorney in a specific office. Our interpretation of the proposal is that a U.S. Attorney could be banned from contact with the entire Department of Justice for one year. Likewise, a district director of the Internal Revenue Service stationed in San Francisco could be barred from contact with the entire Internal Revenue Service for a year after his or her leaving government. Currently, the executive is barred from contact with his district of the IRS for one year, and U.S. Attorneys are barred from contact with their judicial district for a year, but not with their entire departments. We assert there is no justification for such an expansion of current law. It would have far reaching and debilitating

effects on the ability of the government to recruit and retain political, as well as career, executives.

Mr. Chairman this statement is not intended to be disrespectful to those who propose the new restrictions. But for the most part, those who propose these additional restrictions don't have to live under them, and many do not have experience in the affects of these rules as applied to career executives. We should not go down the path of the Procurement Integrity Act and its implementing regulations, which instilled so much uncertainty and concern that some of our best and brightest career and political executives packed their bags and moved out of their offices. It is time to quit assuming that everyone is a crook, and to start assuming that the majority of people are trying to comply with the law and, in most cases, do more than the law requires. We will help in every way we can to make sure that the crooks are caught and prosecuted. Let's not go overboard and unduly penalize the innocent because of the false impression generated by the media that everyone is guilty.

SEA'S CODE OF ETHICS

Finally, Mr. Chairman, the SEA has proposed a code of ethics of its own, which is attached to this statement. It states the principles by which we believe all members of the career Senior Executive Service should conduct their professional activities. After considering and adopting a final version, we will distribute this to our members, and believe that peer acceptance and

implementation of its provisions will help prevent the widespread mispreception about the integrity of our governmental processes. Thank you very much for this opportunity to comment and I would be happy to answer any questions you might have.